

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 307 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MANHERBA M JADEJA

Versus

JASVANTSINH D JADEJA

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Appearance:

MR JF MEHTA for Petitioner

MR PM THAKKAR for Respondent No. 1

MR KV SHELAT for Respondent No. 2

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 16/06/98

ORAL JUDGEMENT

The appellant Manharba Madhubha has filed Regular Civil Suit No. 155 of 1991 for separating her share in the properties described in the suit on the ground that the properties are the joint family properties. She moved application Exh. 5 for obtaining interim injunction against the disposal of the properties in

question during the pendency of the suit. The learned Civil Judge, (S.D.) at Rajkot, by his impugned order dated 16th October, 1991, rejected application Exh. 5 for interim relief on the ground that there was a registered Relinquishment Deed executed by the father of the appellant namely Madhubha Dolatsinh and that even the mother of Madhubha namely Mankunvarba had also executed a will dated 27th March, 1991 in favour of her daughters Rajkunvarba, Dhirajba and Hemkunvarba, respondents nos. 2, 3 and 4 herein.

2. Now, it is not disputed that in case the share of Mankunvarba in the properties in question is required to be taken into consideration at the time of trial, the appellant Manharba being the daughter of predeceased son would be entitled to some share from the share of deceased Mankunvarba, the appellant's grand mother. The will which is proposed to be set up by way of defence will have to be proved at the time of trial. That would mean that unless the will is established at the time of trial, the appellant prima-facie would have some share in the properties in question. This is apart from the fact that even the Relinquishment Deed will have to be considered in its complete perspective at the time of trial. This means that if the appellant is in a position to show that she has some interest in the properties in question, same will have to be protected. Under such circumstances, when there has been relief granted in this appeal from order against the alienation of the properties by the respondents way back in 1992 and has continued uptil now, there is no reason why same should not be allowed to be continued till the suit is finally disposed of. The appropriate course would be to see that the suit which is filed in the year 1991 is proceeded with expeditiously and disposed of accordingly. Hence the following order is passed :

3. The impugned order dated 16th October, 1991 passed by the learned Civil Judge, (S.D.) at Rajkot below Exh. 5 in Special Civil Suit No. 155 of 1991 is hereby quashed and set aside. There shall be interim injunction against the respondents from transferring or alienating in any manner the suit properties till the suit is heard and decided. The trial Court is directed to proceed with the suit and dispose it of as expeditiously as possible, preferably within a period of three months from the date of receipt of these directions. This appeal is accordingly allowed with no order as to costs. Direct Service is permitted to either of the parties.

16.06.1998. (M.S.Parikh,J.)

Vyas